

RECEIVED

SEP 13 2002

COPY OF PAPERS  
ORIGINALLY FILED

1615

TECH CENTER 1600/2900 ETH-1567 (J&J3.0-046)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In-re patent application of  
KELLY R. BROWN, ET AL.

Serial No.: 09/892,993

Confirmation No.: 3764

Filed: June 27, 2001

For: POROUS CERAMIC/POROUS  
POLYMER LAYERED SCAFFOLDS  
FOR THE REPAIR AND  
REGENERATION OF TISSUE

Group Art Unit 1615

Examiner Blessing M. Fubara

#4  
Slip  
9-20-02

I hereby certify that this correspondence and/or fee is  
being deposited with the United States Postal Services  
as First Class Mail in an envelope addressed to  
Assistant Commissioner for Patents, Washington, D.C.  
20231 on

Date of Deposit

(Signature)

(Date)

Assistant Commissioner for Patents  
Washington, D.C. 20231

**ELECTION**

Sir:

In response to an Office Action mail August 9, 2002, the time period for  
responding to which is set for September 9, 2002, applicants respond as follows:

Pursuant the first Office Action mailed August 9, 2002, Examiner Fubara  
has required that applicants make an election between the species recited in the  
following claims:

Claim 9: mechanical reinforcement structure selected from the group consisting of (1) films, (2) scrims, (3) woven textiles, (4) non-woven textiles, (5) knitted textiles, (6) braided textiles, and (7) trusses;

Claim 10: polymer phase selected from the group consisting of (1) growth factors and (2) therapeutic materials;

Claim 13: ceramic selected from the group consisting of (1) hydroxyapatite, (2) tricalcium phosphate, (3) tetracalcium phosphate, (4) fluoroapatite, (5) magnesium calcium phosphate, (6) calcium sulfate, (7) calcium fluoride, (8) calcium oxide and (9) calcium carbonate; and

Claim 14: biopolymer selected from the group consisting of (1) collagen, (2) elastin, (3) hyaluronic acid, (4) chitin and (5) alginate.

Claim 15: (1) aliphatic polyester homopolymers and (2) aliphatic polyester copolymers (and in the event aliphatic polyester homopolymers is elected, a further election is required of one the following species recited in Claim 16 – (homopolymer or copolymer) selected from a group consisting of (1) lactic acid, (2) lactide mixtures of L-, D-, meso and D, L lactides, (3) glycolic acid, (4) glycolide, (5) epsilon-caprolactone, (6) p-diosanone (1,4-diosan-2-one) and (7) trimethylene (1,3-dioxan-2-one).

In addition to the foregoing, with reference to page 5 of the Office Action, the Examiner states that "one ultimate scaffold must be elected".

Applicants hereby elect the following species, with traverse, for further prosecution:

Claim 9: (3) woven textiles are elected;

Claim 10: (1) growth factors are elected;

Claim 13: (2) tricalcium phosphate is elected;

Claim 14: (1) collagen is elected; and

Claim 15: aliphatic polyester copolymers are elected.

Since applicants have elected aliphatic polyester copolymers from Claim 15 for further prosecution, no election of species from Claim 16 is required. Furthermore, with reference to the Examiner's request that "one ultimate scaffold must be elected", applicants hereby elect Example 1 discussed in the specification of the present application as representing the "ultimate scaffold" to be further prosecuted.

As stated hereinabove, applicants make the foregoing election with traverse because they believe that the species recited in the claims are not patentably distinct. Applicants hereby reserve the right to file one or more divisional applications directed to the non-elected species in the event that no generic claim is found allowable. In this regard, it is noted that applicants believe that at least pending Claims 1-5 are generic. Lastly, applicants understand that the non-elected species are withdrawn from further prosecution at this time, but, if one or more generic claims are found allowable, the withdrawn species will be entitled to examination.

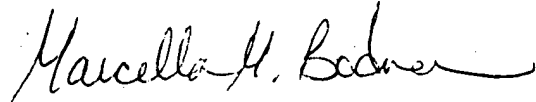
Conclusion

In view of the foregoing election and the above comments, examination of the present application on the merits is respectfully requested. Should there remain any questions or other matters whose resolution could be advanced by a telephone call, Examiner Fubara is cordially invited to contact applicants' attorney at the telephone number indicated below.

No fees are believed to be due in connection with the submission of this Election. If, however, any such fees, including petition and extension fees, are due, the Examiner is hereby authorized to charge them to Deposit Account No. 19-1218.

Respectfully Submitted,

SELITTO, BEHR & KIM



By: Marcella M. Bodner  
Reg. No. 46,561

SELITTO, BEHR & KIM  
203 Main Street  
Metuchen, New Jersey 08840  
(732) 744-1001